

REMARKS

Claims 1-3, 5 and 13 have been canceled, and Claims 4, 6-12 and 14-21 have been amended. Claims 4, 6-12 and 14-21 are present in the application. Applicants respectfully request reconsideration of the application, as amended.

Allowable Subject Matter

Noted with appreciation is the indication in the Office Action that Claims 15 and 19-21 each recite allowable subject matter, and would be allowed if rewritten in independent form. Claims 15 and 19-21 each depended from independent Claim 13. The foregoing amendments add the limitations of Claim 13 to each of Claims 15 and 19-21, in order to place each of Claims 15 and 19-21 in independent form. Claims 15 and 19-21 should thus now be in condition for allowance, and notice to that effect is respectfully requested.

Claim 14 has been amended so that it now depends from allowable Claim 19. Claim 14 should thus be allowable with Claim 19, and notice to that effect is respectfully requested.

Comment on Statement of Reasons for Allowance

In Section 10 of the Office Action, which is at the bottom of page 4, the Examiner offers a statement of reasons why Claims 15 and 19-21 are considered to recite allowable subject matter. Applicants agree that Claims 15 and 19-21 recite allowable subject matter. However, Applicants do not agree in all respects with the Examiner's statement of reasons. For example, Applicants respectfully submit that the statement of reasons should not be interpreted to mean that the stated reasons are the only reasons supporting the allowance of Claims 15 and 19-21, and that there are no other reasons which separately and independently support the allowability of one or more of these claims. Further, Applicants do not agree with the statement of reasons to the extent that it specifically mentions Claim 21, whereas none of Claims 15 and 19-20 depends from Claim 21. In addition, Applicants disagree with the statement of reasons to the extent that it attempts to paraphrase certain recited

combinations using terminology and/or language which differs in some respects from the specific terminology and language that was selected by Applicants for use in the claims.

Objection Regarding Abstract

The Office Action objected to the specification, indicating that the application does not include an abstract. This ground of objection is respectfully traversed. The present application was originally filed in the form of a PCT application designating the U.S. The PCT application, as filed, included an abstract on a separate sheet, as required by PCT regulations. The provisions of 35 U.S.C. §363 specify that the filing of the PCT application designating the U.S. automatically constituted filing of the present U.S. application. Thus, when it was filed, the present U.S. application included an abstract on a separate sheet. What apparently happened here is that, when the PCT application was nationalized in the U.S., the PCT division of the PTO inadvertently omitted from the U.S. file a copy of the originally-filed sheet which bears the abstract. As a courtesy, Applicants are submitting an extra copy of the previously-filed sheet that bears the abstract. Since the present application did in fact include an abstract when it was filed, it is respectfully requested that the Examiner withdraw the objection asserting that there was no abstract.

Statutory Subject Matter Under 35 U.S.C. §101

The Office Action rejected Claims 1-12 under 35 U.S.C. §101, asserting that they are directed to non-statutory subject matter. Applicants respectfully submit that amended Claims 4 and 6-12 recite statutory subject matter under §101

In this regard, Claim 4 depended from Claims 1 and 2. The foregoing amendments add the limitations of Claims 1 and 2 to Claim 4, in order to place Claim 4 in independent form. The limitations from Claim 1 which were added to Claim 4 have been adjusted so as to more positively recite a structural node that effects a wireless transmission. This node was mentioned in Claim 1 as originally filed. Consequently, the adjustment is intended to improve the form of Claim 4, but without significantly altering the intended scope of Claim 4. It is respectfully submitted that Claim 4 recites

statutory subject matter which is within §101, and notice to that effect is respectfully requested.

Similarly, Claims 7-12 each depended from Claim 5. The foregoing amendments add the limitations of Claim 5 to each of Claims 7-12, in order to place Claims 7-12 in independent form. The limitations from Claim 5 which were added to Claims 7-12 have been adjusted so as to more positively recite a structural node that effects a wireless transmission. This node was mentioned in Claim 5 as originally filed. Consequently, the adjustment is intended to improve the form of Claims 7-12, but without significantly altering the intended scope of Claims 7-12. It is respectfully submitted that Claims 7-12 recite statutory subject matter which is within §101, and notice to that effect is respectfully requested.

Claim 6 previously depended from Claim 5, but has been amended to now depend from Claim 7. Taking into account the foregoing comment regarding Claim 7, it is respectfully submitted that pending Claim 6 recites statutory subject matter under §101, and notice to that effect is respectfully requested.

Objection to Claims 8 and 17

The Office Action referred to MPEP §2173.05(d) and raised an objection to each of Claims 8 and 17, on the ground that each claim is rendered indefinite by the presence therein of the word "type". This ground of objection is respectfully traversed, for the following reasons.

First, the provisions of MPEP §2173.05(d) do not mention the specific word "type", or suggest that it is inherently indefinite. Further, MPEP §2173.05(d) indicates that the situations discussed there are very fact-specific. Consequently, and since the Office Action does not offer any explanation of why the word "type" might involve any indefiniteness in the specific context of the particular claims in which it appears, it is respectfully submitted that the Office Action does not establish that there is any reason to consider Claims 8 and 17 to be indefinite because of the presence therein of the word "type". Moreover, in each of Claims 8 and 17, the limitations which appear after the word "type" are not examples, but are positive recitations that help to circumscribe the invention. Accordingly, for all of these reasons, it is respectfully submitted that Claims 8 and 17 comply with MPEP §2173.05(d) and are definite, and notice to that effect is respectfully requested.

Claims 4 and 9-12

The Office Action does not set forth any rejection of Claims 4 and 9-12 as unpatentable over the prior art. In particular, Claims 4 and 9-12 were rejected only under 35 U.S.C. §101. For reasons discussed above, Applicants respectfully submit that Claims 4 and 9-12 are in compliance with §101. Therefore, Applicants respectfully submit that Claims 4 and 9-12 should be in proper condition for allowance, and notice to that effect is respectfully requested.

Independent Claim 18

Claim 18 stands rejected under 35 U.S.C. §103 as obvious in view of Jayapalan U.S. Patent No. 5,533,019. This ground of rejection is respectfully traversed, for the following reasons. Applicants respectfully submit that the teachings drawn from Jayapalan fail to establish a *prima facie* case of obviousness under §103 with respect to Claim 18. In this regard, the PTO recognizes in MPEP §2142 that:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

It is respectfully submitted that, in the present case, the teachings drawn from the Jayapalan patent do not factually support a *prima facie* case of obviousness with respect to Claim 18. In this regard, Claim 18 includes a recitation that "the arranging means supports a Convolutional FEC code, and wherein the overhead bits of the ARQ blocks effectively blocks the Convolutional FEC code". It does not appear that there is any mention in Jayapalan of any type of convolution, much less a convolutional FEC code. MPEP §2142 provides that:

To reach a proper determination under §103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. . . . Knowledge of applicant's disclosure must be put aside in reaching this determination, . . . impermissible hindsight must be avoided, and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

As best understood, the Office Action postulates that Jayapalan could be modified to include use of a convolutional FEC code. However, the Office Action does not identify anything in Jayapalan which teaches or suggests the desirability of making such a modification. Thus, it is respectfully submitted that Jayapalan does not provide any incentive or motivation in support of the proposed modification. Accordingly, there is simply no basis in the art for modifying Jayapalan in the proposed manner. In this regard, the MPEP further provides at § 2143.01 that:

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.
(Emphasis in original).

It is respectfully submitted that there is no showing, suggestion, incentive or motivation in Jayapalan for modifying the disclosure of Jayapalan to include use of a convolutional FEC code, so as to meet the limitations of Claim 18. Accordingly, it is respectfully submitted that Claim 18 is not obvious under §103 in view of Jayapalan, and notice to that effect is respectfully requested.

Independent Claims 7 and 16

Claims 7 and 16 each stand rejected under 35 U.S.C. §103 as obvious in view of the Jayapalan patent. This ground of rejection is respectfully traversed, for the following reasons. As discussed above, the PTO recognizes in MPEP §2142 that:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

It is respectfully submitted that, in the present case, the teachings drawn from the Jayapalan patent do not factually support a *prima facie* case of obviousness with respect to Claims 7 and 16. Claim 7 recites "multiple wireless environments in the spread spectrum wireless network, and wherein the number of ARQ blocks is responsive to the environment for producing a relatively high throughput". Claim 16 recites that "the arranging means supports multiple wireless environments in the spread spectrum wireless network so that the number of ARQ blocks is responsive to the environment for producing a relatively high throughput". The Office Action concedes that Jayapalan fails to disclose the subject matter of these quoted limitations, but asserts that it would be obvious to a person skilled in the art to modify Jayapalan to include this subject matter. As noted earlier, MPEP §2142 provides that:

To reach a proper determination under §103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. . . . Knowledge of applicant's disclosure must be put aside in reaching this determination, . . . impermissible hindsight must be avoided, and

the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

Here, the Office Action asserts that Jayapalan could be modified to include the subject matter of the quoted limitations from Claims 7 and 16, but the Office Action does not identify anything in Jayapalan which teaches or suggests the desirability of making such a modification. Thus, it is respectfully submitted that Jayapalan does not provide any incentive or motivation in support of the proposed modification. Consequently, there is simply no basis in the art for modifying Jayapalan in the proposed manner. In this regard, the MPEP further provides at § 2143.01 that:

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.
(Emphasis in original).

It is respectfully submitted that there is no showing, suggestion, incentive or motivation in Jayapalan for modifying the disclosure of Jayapalan to include the subject matter from the above-quoted limitations in Claims 7 and 16. Accordingly, it is respectfully submitted that Claims 7 and 16 are not obvious under §103 in view of Jayapalan, and notice to that effect is respectfully requested.

Independent Claims 8 and 17

Claims 8 and 17 each stand rejected under 35 U.S.C. §103 as obvious in view of the Jayapalan patent. This ground of rejection is respectfully traversed, for the following reasons. As discussed above, the PTO recognizes in MPEP §2142 that:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

It is respectfully submitted that, in the present case, the teachings drawn from the Jayapalan patent do not factually support a *prima facie* case of obviousness with respect to Claims 8 and 17. Claim 8 specifies that "the number of ARQ blocks is responsive to whether the information is voice or data". Claim 17 recites that " the number of ARQ blocks is responsive to whether the communication type is voice or data". In explaining the rejection of Claims 8 and 17, the Office Action merely states that, in Jayapalan, "the wireless network supports both data or voice". The Office Action does not indicate that there is any disclosure in Jayapalan of utilizing a number of ARQ blocks which is a function of whether something is voice or data. As noted earlier, MPEP §2142 provides that:

To reach a proper determination under §103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. . . . Knowledge of applicant's disclosure must be put aside in reaching this determination, . . . impermissible hindsight must be avoided, and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

Here, the Office Action does not state that Jayapalan discloses the subject matter in the above-quoted limitations from Claims 8 and 17. Further, the Office Action does not state that there is anything in Jayapalan which teaches or suggests the desirability of modifying Jayapalan to add such subject matter. As pointed out in MPEP § 2143.01:

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.
(Emphasis in original).

It is respectfully submitted that the Office Action has not established a prima facie case that Jayapalan discloses the subject matter in the above-quoted limitations from Claims 8 and 17, or that there is some showing, suggestion, incentive or motivation in Jayapalan for modifying the disclosure of Jayapalan to include such subject matter. Accordingly, it is respectfully submitted that Claims 8 and 17 are not obvious under §103 in view of Jayapalan, and notice to that effect is respectfully requested.

Dependent Claim 6

Claim 6 depends from Claim 7, and is also believed to be distinct from the art of record, for example for the same reasons discussed above with respect to Claim 7.

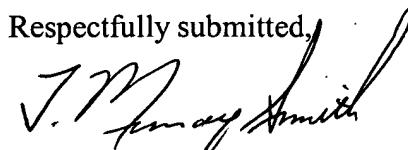
Appl. No. 09/762,991
Reply to Office Action of May 6, 2004

Attorney Docket No. RR2606 (22171.240)
Customer No. 27683

Conclusion

Based on the foregoing, it is respectfully submitted that all of the pending claims are fully allowable, and favorable reconsideration of this reissue application is respectfully requested. If the Examiner believes that examination of the present application may be advanced in any way by a telephone conference, the Examiner is invited to telephone the undersigned attorney at 972-739-8647.

Respectfully submitted,



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Amendment Transmittal
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